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MISCELLANY.

Foreign Corporations—"Doing Business."—Interesting points concerning foreign corporations are decided in the case of *Knapp v. Bullock Tractor Company*, United States District Court, S. D. California, S. D., May 19, 1917 (242 Fed. 543). The fact that a foreign corporation is engaged in interstate commerce, it is held, does not render it immune from the assertion of jurisdiction by the state courts in any state in which it is engaged in doing business and in which proper provision is made by law for the assertion of jurisdiction over it. A foreign corporation is "doing business" within a state where it is engaged in a more or less continuous effort, not merely casual, sporadic or isolated, to conduct and carry on within such state some part of the business in which it is usually and generally engaged.

The facts disclosed by the proof show that an Illinois corporation was selling farm tractors in California through resident sales agents, who were given exclusive territory, in which they were required to solicit and procure orders. Their contracts required them to receive all goods shipped, to deliver, set up and start every machine sold, and instruct the purchaser how to adjust it, and to be responsible for all tractors purchased. Orders for machines provided that they were not to be valid until accepted by the company, and contained a warranty and an agreement to furnish free of charge any part proving defective within one year, and by its agreement with its agents the company agreed to furnish a supply of repairs or spare parts. The company reserved the right to make sales at the San Diego exposition, and within two years its president had been in the state superintending and directing the management of its affairs, and various directors, employees and agents, including its general manager, had assisted in demonstrating, operating and repairing tractors, and on one occasion a sale had been made by the general manager. The court held that the corporation was doing business in California. It was held further that a resident sales agent was a "business agent" of such corporation upon whom service of process was properly made, under Code Civ. Proc. Cal. § 411, providing that, in suits against a foreign corporation doing business and having a managing or business agent within the state, service may be made by delivering a copy of the summons to such agent. Civ. Code Cal. § 45, requiring every foreign corporation to file with the secretary of state a designation of some resident of the state upon whom process may be served, and providing that process may be served on the person so designated, but if no such person is designated then on the secretary of state, violates the due process clause of the Constitution, so far as it authorizes service on the secretary of state without requiring him to give any notice to the corporation.—Nat. Corp. Rep.

John G. Johnson: A Great American Lawyer¹—By **Hampton L. Carson**.²—John Graver Johnson was a native Philadelphian. The date of his birth, as stated in his will, was the 4th of April, 1841. His grandfather was the village butcher at Chestnut Hill, a sturdy and highly respected old man of the type of an English yeoman. His father was a blacksmith, whose busy shop stood by the roadside near the junction of Germantown and Highland Avenues. His mother, Elizabeth Graver, daughter of John Graver, a farmer, was a very remarkable woman, with handsome features and great charm of manner. She had been a school-teacher of unusual influence with her pupils, and, in her years of struggle to maintain her children, kept a millinery and notion store. There is a pleasant story that Mrs. Watmough, whose daughter had married the late Judge M. Russell Thayer, was visiting the store, and little John, a chubby, curly-headed, barefooted boy in blue jeans, attracting her attention, she asked his mother what she intended for him, who replied, "I think of making him a blacksmith, he is so strong." The boy said, "I don't want to be a blacksmith; I want to go to school." "Send him to me," replied Mrs. Watmough; "I like little boys and I have some books with pictures, and can give him an hour a day."

Mr. Johnson's mother lived to be more than ninety years of age, dying but a short time before her son, whose filial devotion to her was one of the most beautiful and touching traits in his character. He never permitted other engagements throughout a busy life to interrupt his weekly visits to her. It was from her that he drew an inherent but little suspected gentleness, while he owed much to her teachings. From the paternal side he drew his inexhaustible physical strength. It was an ancestry not unlike that of Franklin in his happy combination of somewhat irreconcilable qualities.

In July, 1853, when but little more than twelve years of age, he entered the Thirtieth Class of the Central High School of Philadelphia. The most conclusive evidence of the diligence and leadership of the boy Johnson is to be found in the official records of the High School; his average of monthly results with fifteen professors is stated at 98/7; his average in written examinations at 95/7, proof positive that his handwriting then was not what it became later, and his term average is given at 97/1. These figures gave him the rank of second in a class of 114 members, whose average age exceeded his own by two years and three months. He graduated in 1857, the last three years of his school days being spent in the familiar building at Broad and Green Streets. He never went to college.

1. Adapted, by the author, from an address delivered by him before the Pennsylvania Bar Association, June 27, 1917.

2. Of the Philadelphia bar; former Attorney-General of Pennsylvania; author of the History of the Supreme Court of the United States, and other works.

After graduating from the High School, he entered the office of Benjamin Rush, and after Mr. Rush's retirement from active professional work, continued in the office of his brother, J. Murray Rush, who died in 1862. William F. Judson, Esq., occupied offices with Mr. Rush, and while in these offices Mr. Johnson studied law. He partly supported himself in those days by collecting rents, by engrossing deeds and copying legal papers, and, as he himself once told me, he wrote a good round conveyancing hand, which was not spoiled until later in life, when, under the pressure of jury trials, and the habit of taking his own notes of testimony, he invented a purely personal method of shorthand which ruined his writing.

While an office student he was an active member of the venerable Law Academy, and there first displayed his powers of concentration in argument; he also attended the lectures of George Sharswood, Peter McCall and J. I. Clark Hare in the Law Department of the University of Pennsylvania, graduating in the Class of 1863.

Mr. Johnson, as a lawyer, was the product of old-fashioned, I might say of vanished, methods of instruction. As an office student he had daily opportunities of observing his preceptors' manner of meeting clients and of disposing of their business. He could observe deportment and critical attitudes as well as professional habits of handling legal affairs. The offices were small, consisting at most of two rooms connecting with each other, and it was inevitable that much would be seen and much overheard, not only of interviews between clients and counsel, but between counsel acting as colleagues, or as opponents discussing the merits of their cases, in those days rarely settled without actual litigation. No office boy, no stenographer, no typewriter excluded the student from familiarizing himself with the detail of legal work. All papers, praecipies, writs, declarations, pleas, rejoinders, rebutters and sur rebutters, affidavits, rules, motions, paper-books and briefs were written in long hand, copied by the student three or four times, and served by him personally on opposing counsel and on judges whose acquaintance was thus made, and an office docket was kept which was an exact transcript of the court docket in the prothonotary's office, which it was the duty of the student to keep daily up to date. The system of common law pleading, based on Chitty and Chitty's forms, and expounded by Stephen in his philosophic analysis, was in full force. Every office had its own favorite collection of written forms, which practice or personal experience had approved, and in making preliminary drafts of special pleadings for the final revision of the preceptor, the student was expected to follow the most apposite of these. Whatever might be argued, as was done later, against the barbarous terminology, the tautologies, the subtleties, and the too minute insistence upon purely formal matters, there can be no doubt that the legal wit of man never devised a more searching method of

analysis in determining the substance of a controversy, or in narrowing allegations to specific issues, whether of law or fact, than the now obsolete system of pleading. It enabled a man of fine analytical powers to cultivate the faculty of legal diagnosis, and it was in this that Mr. Johnson, when in the midst of the heaviest practice, excelled all competitors, whether of the old school or the new. Besides being steeped in the essence of the common law as administered by Tilghman and Gibson in interpreting the rules of Buller, of Mitford and of Story, Mr. Johnson became saturated with the reverential attitude of Judge Sharswood towards the past, whose favorite maxims were *stare decisis*, disturb not ancient landmarks—*stare super antiquas vias*. He never became a legal reformer. He adapted himself with flexible ease to changes when they came; but he was never a theorist nor an agitator of change. He took the law as it was, and troubled himself not at all as to what it might be or ought to be. On the other hand, he was not a Tory, but cheerfully kept step with progress. Then, too, he had the opportunity, denied to the student after the dispersion of the bar into many court rooms following the adoption of the New Constitution, of seeing, at one time and at one place, the active men of the bar in spirited conflict. The old District Court, on a motion day, was a legal Field of the Cloth of Gold. The sovereigns of the bar were there in all their trappings and with all their satellites. Their joustings were real, and their manner of tilting and of riding their adversaries down could be studied at close range. They would spend hours in reading aloud to the court injunction affidavits and masters' reports with copious extracts from the manuscripts of examiners, while they would spend days in the discussion of leading cases as printed in the reports themselves, and not as mutilated in excerpts from digests and encyclopaedias. The younger men of the bar would crowd into the court room and listen to the arguments, and after adjournment discuss and debate among themselves.

In later years Mr. Johnson would have chafed with impatience under all this minuteness and tediousness of discussion, but in his student days and his first ten years at the bar he was absorbing through every pore of a thirsty mind the fundamental and eternal principles with which he became so familiar that in his busiest years he contented himself with stating them to a court with convincing force and brevity, without pausing to justify them to his own mind, or to persuade a judge that they were sound.

Finally, as supplementing his office work, his attendance at the law school, his observations of the leaders in action, and the voluntary moot courts of himself and his friends, and serious arguments at the Law Academy, he read Smith's Leading Cases, the most approved text book and the current decisions. Such were the methods by which he fitted himself for forensic work, and better foundation in the law could no man lay.

He had been but five months at the bar when he became a soldier. He served as a private, as a member of Battery A, First Pennsylvania Artillery, during the six weeks' period of the Gettysburg Campaign. This Battery was a revival of one which had been organized by members of the Philadelphia Bar at the time of the riots of 1844. It had been called out at the time of the Battle of Antietam in 1862, and in June of 1863 was again called into service.

In 1867 Mr. Johnson published a pamphlet of sixty-one pages entitled "A Criticism of Mr. Wm. B. Reed's Aspersions of the Character of Dr. Benjamin Rush, with an incidental consideration of General Joseph Reed's Character, by a member of the Philadelphia Bar." It is written with great freedom and much bitterness of spirit, and exhibits an array of formidable documents in support of the thesis. The Johnson pamphlet is interesting in the present connection as displaying in its long sentences and varied metaphors a strong contrast to Mr. Johnson's terse style in later years. It contains abundant evidence of a far wider and more varied reading than most of his friends have credited to him. With the exception of some letters in the public press upon Rembrandt's Night Watch and other masterpieces, this was his sole excursion into the field of literature.

Therafter, for nearly fifty years, unbroken by illness, and refreshed only by a few weeks of summer travel each year, he devoted himself exclusively, relentlessly to the law. The law was his life. Force, energy, vitality, strong feelings he had, the peculiar something in which body seemed intellect and intellect body, so completely did his great bodily forces sustain the emotions of the mind, and so completely did the mind command the obedience of the body in a ceaseless display of energy. Volition played its part, but the force of circumstances controlled his volition. His business became so vast and his sense of duty was so strong that there was no escape. Yet he was not a slave. He gloried in his work. Each new task sharpened his appetite for more, and there was no satiety. It was not avarice: it was the fierce hunger of a ravenous mind.

Few men, if any, have advanced more rapidly. When Henry J. Williams retired from practice in 1864, his important clientage, particularly that of the Pennsylvania Company for Insurances on Lives and Granting Annuities, passed into the hands of Mr. William F. Judson, whose assistant was Mr. Johnson. The company was the first of its kind in this country, and as executor and trustee controlled many large estates. Its practice was to make its counsel the special adviser of each estate held by it, and in this way the clientage of Mr. Judson was greatly increased. He broke down beneath the strain, and died in 1870. Mr. Johnson succeeded him. This was due to his competency and to his familiarity with the detail of the cases in hand, backed by an important and friendly in-

terest. Mr. Johnson had just won a case of moment for the Bank of North America, and his name was on the lips of financial magnates. Then came the panic of 1873 with a wake of disaster. Mr. Johnson foreclosed more mortgages, as the sheriff's sales of 1874, '75, and '76 will show, than any other member of the bar. This was not because he was sought out by mortgagees, but because there being no other trust company in competition with The Pennsylvania Company, there were larger sheaves in its barn to be threshed than elsewhere, and the harvest fell into the hands of its counsel. In those days the commission named in each bond as belonging to counsel was five per cent., and Mr. Johnson found himself in lucrative practice before he was thirty years of age. Instead of facing an adverse wind, he was borne on by a favoring breeze. With splendid health, with expanding powers stretching themselves in exhilaration, he moved out into the public gaze. His first notable jury case was in divorce—that of *Koecker v. Koecker*—in which he was junior to Mr. Cuyler for the libellant, with the handsome and dignified George H. Northrop for the respondent. Judge Ludlow was the trial judge, and the case, before it reached a settlement, was hotly contested for more than a week. As a law student interested in court procedure I attended the trial. I recall Mr. Johnson's personal appearance. Big, burly and somewhat baggily dressed, he sat in the chilly draft of an open door with his overcoat wrapped about his legs. He had neglected to have his hair cut, and it hung beneath his ears and upon his neck like a tawny mane. When he rose to object to a question on cross-examination, he would throw his overcoat upon the floor, shake his head like a young lion, and roar out his objection. The audience was greatly stirred. As the evidence became personal and startling, the delicacy of the libellant shrank from further contest, and a settlement was arranged. I recall the unctuous manner of Mr. Cuyler, and the bland tones in which he asked the judge to permit a juror to be withdrawn, and I recall the astonished look on the face of the judge, whose mouth opened from ear to ear, and whose brown eyes were full of a strange light.

I next recall Mr. Johnson in one of the earliest of his Supreme Court cases—that of *Williams' Appeal*, reported in 73 Pa. 249. Dr. James Rush had by will made a munificent bequest to The Philadelphia Library Company. He had restricted the site of a building to be erected with his funds to certain limits, but by a codicil removed the restriction, and in his lifetime chose a site and bought a spacious lot for the purpose. On his deathbed he obtained a promise from his executor to build upon that lot. The library company, to whom the site so chosen was distasteful, because remote from the daily walks of the most venerable of its stockholders, objected that as the estate had been given to Henry J. Williams in

trust to choose a site at his discretion, it was a practical fraud on the power for a trustee to fetter his discretion by a deathbed promise. The master, P. P. Morris, Esq., a most competent lawyer, and Mr. Justice Mercur, in overruling exceptions, had so held in the old Court of Nisi Prius. An appeal was taken to the Supreme Court by Mr. Williams. Mr. Johnson, Mr. George Junkin and ex-Chief Justice Woodward appeared for the appellant, Mr. William Henry Rawle, Mr. McMurtrie and Mr. William M. Meredith for the appellee.

There was much of scholastic philosophy and somewhat of religious bitterness displayed by the counsel in their unusually brilliant arguments. Mr. McMurtrie had argued that, although the trustee had sworn that his own independent judgment, irrespective of the promise, concurred with that of the testator, yet the mind of the trustee, by reason of the promise, was under an unconscious constraint, and this was *mala fides* as to the trust. Mr. Rawle, who was always a caustic speaker, and whose sharp words were made all the keener by a harsh voice and intense severity of gaze, denounced the act of Mr. Williams as an illustration of the pernicious effects of the doctrine of Predestination and Election. Mr. Junkin, himself a devout Presbyterian, defending Mr. Williams, who was a pillar of the Presbyterian Church, fairly boiled with rage over the indecency of the assault, and so far forgot the law in his discussion of theology that at the close of the day Chief Justice Read, in rising, extended his long form and his head in a rusty wig over the bench, and pointing a bony finger at the excited counsel, said: "To-morrow morning, Mr. Junkin, you must make an argument." I well recall the striking contrast that the opening speech of Mr. Johnson presented to this heated background. Intensely earnest and even indignant over the assault made on the integrity of Mr. Williams, whom he described as an old and skillful lawyer, well informed of his duties, a gentleman of intelligence and refinement, of unblemished integrity and purity of character, with no selfish or hostile interests to serve, he confined himself to a destructive analysis of the Duke of Portland's case, strongly relied on by his opponents, and then for two hours discussed the main features of more than twenty cases supporting his general contention that no court of equity would entertain a bill to compel or control the exercise of a mere discretionary power. The pertinacity with which he clung to the main proposition, the legal learning he displayed in illustrating it, and his steadiness in refusing to wander made a lasting impression on the bar. I heard it discussed for some days by old and young, and the common expression was "Johnson made the best legal argument." Instinctively I take this case as a type of his subsequent work. His big body, inhabited by a big mind, free from hesitation, and never looking to the right or to the left, knew its way through the laby-

rinth, and would not be hindered from taking it. He pursued a straight course always to a logically inevitable end.

From this time forth his course was onward and upward. His pace quickened from a swift walk into a run, and then into a rush. Whenever he could act alone he preferred it. The old-fashioned deliberation and sedateness and ponderous formality of the seniors, and their inveterate preference for continuances to trials vexed him. He cleared his pathway with telling strokes from a self-sharpened axe. He was taken in as senior by a multitude of younger men who sought the aid of his fighting brawn, and to whom he was always considerate with advice or generous with actual aid. He passed from court-room to court-room, and from trial to trial, without ceremony or respite. It was early morning work in the office, five hours daily in forensic discussion, two to three hours daily in the afternoons before examiners or masters, and then a resumption of office work prolonged until a late dinner hour, and work at the office until midnight. To a large extent he personally looked up the authorities in a case, and he invariably personally analyzed the testimony. In consulting authorities he read carefully every word, but needed no second reading. He discriminated in his selection of cases, using but few, and so long as he was satisfied as to the principle adopted by the courts, he used his cases rather as illustrations than as authority. He had the power of instant concentration on the subject. Once having obtained all the factors of the problem, he decided it without vacillation, and then dismissed the matter and took up another, with matchless versatility. He read and analyzed every word of testimony, and during a trial or an argument would spend his nights in that work, making a complete reduction of the testimony in the shape of notes which no one else could read and from which he would speak. As a result he was always most accurate in his facts, and it was dangerous to challenge any of his assertions. Judges in all courts, high and low, learned to trust him, until confidence in him became supreme.

As his business grew from year to year its bulk became enormous, and its variety astonishing. He specialized in nothing, but was equipped for all contentions, whether federal, state, municipal, or purely private. Such was his versatility that he turned with surprising ease from the discussion of one subject to that of another. A Justice of our Supreme Court writes: "I have many times noted the thoroughness with which able lawyers have mastered special subjects, as the result of much study and long experience. But Mr. Johnson was apparently never to be taken at a disadvantage, and seemed to be at home in almost every phase of any legal situation in which he could be placed. This was not, of course, the result of any magic. It came from the really profound knowledge which he had of the fundamental principles of the law." He gave as close

attention to trifling disputes as to matters of urgency, and to a remonstrance that he should give so much valuable time to small matters, he replied that "no matter was small, and the only way to conduct a successful practice was to treat all his clients alike, irrespective of the amount involved." Even in the case of office visits the millionaire had to await his turn if the hundred dollar was the earlier in his call. To state the subject-matter of his cases would be to copy the headings of a digest. From admiralty to receiverships and trusts, the whole region had been trodden down by him into familiar paths. I once asked him how he accomplished so much. He said: "I encounter three classes of opponents, and lose but little time with two of them. With the really big men no time is lost. We either compromise or fight, and we soon learn which it is to be. With the little fellows no time is lost, I trample them down in the mire; but with the little fellows who think themselves big, oh, h—l!"

It was inevitable that many of his cases would lack merit. He even lost cases which he fully expected to win. He did not scrutinize as closely as he might have done the merits or the chances. He felt that it was the right of every morally clean litigant to be heard, and after making the best presentation possible, he left the responsibility of its determination, with the tribunal to which it belonged. As has been well said: "He was eminently the champion of the 'forlorn hope' in the many appealed cases where he was retained as an aid to young lawyers discouraged by results in the lower courts. No young practitioner ever appealed to him for aid in vain, if any ray of hope could be seen. No man at the Pennsylvania Bar ever softened the edge of defeat for so many young lawyers as did Mr. Johnson."

His memory was phenomenal; lawyers and business men alike were impressed by this. Even though years had elapsed since he was last consulted, he could take up the details of a case which he had once mastered without requiring a repetition of statements. In a case where he had drawn a bill involving a very large sum of money, he was compelled to try it without time to refresh his recollection. The judge was quick, and directed him to proceed. He called the defendant for cross-examination, fired some questions at random, which, being wholly irrelevant, confused the witness, who did not know what was in store for him. In the meantime, Mr. Johnson was glancing over the bill, back and forth, until he got his bearings, and then whispering to his colleague, "I have got hold of it now," from that time on he closed down upon the case in a manner which my informant tells me was the finest piece of work in court he had ever witnessed.

In another case he was consulted as to the possibility of putting a new gas company into a certain part of Philadelphia. It was thought that there was a possible loop-hole of escape from a some-

what exclusive statute. Mr. Johnson instantly said, "There is no such chance," and stated his reasons, and then added, "I gave an opinion on that once," and sending for it, it was found that he had followed exactly a line of reasoning which he had formulated fourteen years before.

The officers of trust and title companies have told me that when compelled to consult him from time to time, no matter how complex the matter or how involved the figures and, the distributive shares or the terms of special trusts, it was never necessary to do more than mention the name of the estate to recall all the circumstances to his mind, so thorough had been his original mastery of the facts.

In a suit brought by two general partners in the capacity of executors of a deceased special partner against a third general partner to recover the amount of the special capital, they being insolvent, and the defendant solvent, the cause went to a referee, and although Mr. Johnson had not participated for two years in following the testimony, yet at the time of argument he emphasized the salient features of the case and triumphantly secured a dismissal of the bill.

His knowledge of men was extraordinary, and his judgment of character was intuitive. He read men at a glance. He knew their controlling motives, passions and impulses, and had the power to discern that which would express the judgment of the average man under given conditions. He never lost sight of the human side of a case, for though the logic of the law was strong, he knew how to array it with the human, if it were possible by an adjustment of legal principles according to the views or even the prejudices of the masses, or if these were against him, he adroitly subdued their effect. He harmonized the legal view with the views of the "man in the street." This was the secret of his success with juries and witnesses, for "his power of judging men, individually and collectively, was uncanny." The same was true of judges. He knew their strength, their foibles, their leanings, their educational antecedents, and how to sway their minds upon an argument. In arguing applications for injunctions against noise, he carefully avoided citing Judge Hare's opinion in the St. Mark's Bell case before Judge Thayer, lest he should exasperate him. He had no hesitation in citing it before Judge Arnold or Judge Willson. He could gauge accurately the motives and arguments which would appeal most strongly to judges, and often predicted how the Supreme Court of the United State or of Pennsylvania would divide upon difficult questions, and he did this even in cases which he had not argued. In many instances his predictions were verified by the result. In consultations, after stating his views, he would say, "That is the law, but the court will not so hold in this case." He knew the futility of a frontal attack upon a decision which stood in his way, and if Justice Mitchell was on the bench he never attempted it. His flanking movements

were interesting to watch, and sometimes they were successful. A striking illustration of his method of concealing his skill is to be found in *Neafie's Estate*, 199 Pa. 307, in which he induced the Supreme Court unanimously to overrule *Nathan's Estate*, 191 Pa. 404. The lower court (10 Dist. R. 70), in entering a decree for the removal of a trustee had relied on the lack of confidence and hostile relations between the trustee and his *cestui que trust*. Avoiding a direct and open attack upon *Nathan's Estate*, he effectually undermined it by the suggestion that dissatisfaction with the trustee was the result of mere caprice, and he emphasized the trivial to the exclusion of the substantive grounds of criticism. The manner of the trustee had been complained of, for when he had called upon his *cestui que trust* he had drawn a \$10,000 check from his pocket, drawn to her order, and flaunting it said, with what she characterized as cheap vulgarity of manner, "How does that strike you?" Mr. Johnson, picking out this ground of complaint as a sample of other grounds, said in substance: "Here is an amiable woman, suffering doubtless from nervous irritability, whose trustee has to see her at times to pay her instalments of income. She complains that on one occasion he outraged her sensitive feelings by saying to her, in handing her a large check, 'How does that strike you?' Why any one of us, including your honors, would be glad to be struck that way. To remove a trustee for striking his *cestui que trust* with a \$10,000 check drawn to her order would be a novel precedent." Through the adroit emphasis placed upon a trivial incident, the court was started in the direction of finding all of the complaints without substantial basis, and the outcome of captiousness. He displayed his skill as an advocate in minimizing his adversary's case by placing particular emphasis on its weak features, with a view of diverting attention from the strong points. One of our most experienced trial judges remarked to me that, according to his observation, there was always a tinge of ridicule of his adversary lurking in what he said.

Mr. Johnson did not indulge in rhetoric, if that scornfully used word means a habit of expression showy in appearance or high-flown in style; but if it means the science and art of effective discourse, then he used it with telling effect. He never swept juries, adversaries or courts from their composure by startling and impassioned outbursts of oratory. He owed nothing to graces of manner or tricks of voice. He was bulky and awkward, and his voice was so high in pitch as to be sometimes shrill. In pouring out his words he was more like a high-pressure fire hose than the fountains at Versailles. Those who heard him for the first time, expecting from his reputation for verdict getting something of the Brewster or Cuyler or Sheppard manner, were disappointed. Those who heard him frequently observed that he was all force, overwhelming force. They

saw a huge man with intense gaze, sweating at every pore, with both hands extended, one holding his eye-glasses, the other clutching his handkerchief, driving home a few points like railroad spikes into a tie. He jammed meaning into words, and his sentences were surcharged. His speeches were as rapid as they were brief. One who often observed him writes: "To me, his peculiar strength lay in the unrivaled faculty for seeing and enforcing the predominant arguments that supported his case, and his almost contemptuous disregard of what was relatively unimportant. No one I have ever heard could tear the heart out of a situation with so swift or so powerful a hand, or spent so little time and effort on mere detail." Another correspondent writes: "Mr. MacVeagh brought to my mind the image of an agile, graceful panther approaching his prey with a stealthy, crouching and almost fascinating attitude, and then springing at the climax of his argument with a lightning-like flashing suddenness. The vision I had of Mr. Johnson was that of a great big powerful steamship forcing its way to its point of destination against wind and tide and all the opposing forces." This was particularly true of his later years. In his early middle career, while he was still under the spell of the men he soon displaced, he garnished his jury speeches and his paper-books with extracts from authors he had recently read—Shakespeare, Scott, Dickens, Thackeray and Burns. I once heard him tell Judge Allison that between the case he was considering and the one relied on by his opponent, Judge Brewster, "there yawned a gulf as wide as any that ever yawned in Rome." In conflict between City Councils and the Public Building Commission, in replying to City Solicitor Charles F. Warwick, he contrasted genuine public opinion with the product of newspaper agitation in the following words: "Some reference has been made by my eloquent young friend on the other side to what he has been pleased to term the public opinion which has been aroused by this litigation, and which has found expression upon the merits of this case. Public opinion! For a real and genuine public opinion, the voice of the people raised in commendation of some great and heroic deed, or raised to voice the world's condemnation of some great wrong, for a public opinion such as that, I have the most profound respect; but for this putrid and counterfeit thing brought into being at the call of selfish interests; this unclean thing arising out of the miasma of partisan politics; this monstrous thing lashed into fury by a sensational or corrupt journalism, for a public opinion such as that, I have only the most supreme contempt."

His latter days methods are thus concisely described: "For nearly eighteen years I heard him in the argument of cases, and down to his last entrance before our court he was the commanding figure before it, as he was and would have been before any court. The vigor of the intellect of his noon-day life was unabated when the

shadows of evening began to fall. His peculiar strength as a lawyer was his instant grasp of every situation presented to him and his intuitive understanding of the strength or weakness of his clients' cases and of what confronted him on the other side. His chief characteristics were thorough preparation of his cases; the presentation of his clients' cause always concisely, but never obscurely; his accuracy in the statement of facts and his clear and forceful exposition of the law applicable to them. His greatest characteristic was his ability to say within the time limited by rule of court everything necessary to be said in any case. On the very rare occasions when he asked for an extension of time he would fail to use it. When he spoke, paperbooks would lie unopened on the bench, for the judges who heard him knew the facts of the case would be correctly stated and that he would faithfully help the court to reach a correct conclusion as to the law by which they were governed."

Another correspondent, one who heard him before the Supreme Court of the United States, writes: "Mr. Johnson's force appeared to me to be a peculiarly impalpable and indescribable one, because it came absolutely from the man himself. It was not the resultant of any arts or any factitious training. One felt himself in the presence of a great, powerful, straight-thinking personality. I have heard him in thirty or forty minutes present the arguments in a most important case involving the constitutionality of a tax law. He held the court completely during the time of his speaking, and impressed on them in indelible and unforgettable fashion the exact positions which he believed to be decisive in the case. He did not stop to read extracts from a brief nor go into any matter not absolutely essential to the determination of the case. His mind seemed to fly to the point at once, and he drove in the nail with sledge-hammer blow. I think his freedom from artificiality or device of rhetoric was in itself a force. He seemed almost like a force of nature moving forward irresistibly. There was a virility and common sense about his logic that was most compelling."

Another, who was with him in the Supreme Court of the United States, writes: "His strength always seemed to me to lie; First, in his mastery of fundamental principles; second, in his ability to quickly and correctly analyze a case and discover its strong and weak points; and third, and chiefly, in his power of presentation. I never knew a man who could present a point with so much terseness, clearness and power. It was in the combinations of these qualities that I think Mr. Johnson excelled over all other men, and to this combination he owed his success and the deep impression he made upon the bench and bar."

Another writes: "His natural advantages were great, but the secret of his success was in the one word 'concentration.'"

As a cross-examiner Mr. Johnson was most formidable. It is

difficult to state his theory or to describe his manner. Both varied with the case and the witness. He would comb out some witnesses, he would crush others. Some he would cajole, others he would ridicule, others he would confuse, others he would terrify. With some he was insinuating and gentle, with others he was cruel and pitiless. To the remonstrance of a colleague against what he thought unnecessary severity towards an opposing party, he replied: "I always do that, and I generally find that the people I have been most severe on became by clients." I once saw a man—a broker attempting to explain a questionable transfer of stock—totter and fall senseless in the witness-box beneath his blows. In a contested will case he destroyed the composure of a self-sufficient witness with the grim salutation, "Now, Major, let me sharpen my teeth on you." Another man, whose name was Liberty, he addressed as "Mr. Freedom." It would be difficult to express in words the withering contempt with which he would say, "That will do." Sometimes he made his principal argument in the form of adroit questions on cross-examination. Sometimes he would reveal the character of the witness by a single word. On cross-examining a real estate broker who had been receiving commissions from both sides in large amounts, he asked: "Tell me, then, how you got this money into your hands, possession—oh, I am not particular as to the phrase I use—into your maw?" In a recent case men of high position and great business experience were called to sustain a contention that their acts had not been induced by the credit of a company to which they had loaned money, and which in turn deposited with them the moneys so loaned. The first of these witnesses was so confused by the cross-examination that the others who heard it went upon the stand prepared, as they supposed, to meet the same line of cross-examination. Mr. Johnson attacked each witness upon different lines, and every man felt that he had not been able to cope with so resourceful an examiner. Bright and able men though they were, they were not able to withstand successfully the skill that made them in effect witnesses for the plaintiff rather than for the defendants by whom they were called. Mr. Johnson had also an intuitive sense as to the character of testimony. In a case where a large mass of correspondence had been produced, his quick eye detected the fact that the letters ran in close sequence for a time, and then there was a gap for some days, when the correspondence was resumed. Scouting the existence of a missing letter, he asked the witness whether the mass produced contained all the correspondence. Receiving an affirmative answer, he dropped that line of inquiry, but again returned, and again, returned, and again receiving a positive answer, he again passed it, to return a third time with persistency and solemnity, adjuring the witness not to forswear himself. Finally, the witness recalled, or at least admitted, that there was an intervening letter.

"Ah! I thought so," murmured the great cross-examiner; "now, suppose you let me look at it." The letter when produced proved to contain matter which was conclusive of the case. His caution was as excellent as his persistency. When a colleague suggested a question for cross-examination, Johnson quickly replied, "Don't taunt a pole cat." On another occasion he gave the opinion that no question should ever be asked of a witness unless the examiner was sure that there was not "a morass" under it. Sometimes, however, the witness had the better of it. In a case where Mr. Johnson sought to show that Sousa's Band was the property of his client, and not that of Sousa, he called one of the members of the band to prove that his contract was with the plaintiff, and flourished a signed paper in the face of the witness containing his signature. The German witness coolly replied: "Dot contract's no goot." "Why not?" asked Mr. Johnson. "Vell, if I do not wish to keep it, I blay out of tune." No one laughed more heartily than Mr. Johnson himself, who promptly dropped the examination. In the same case, my correspondent informs me, Johnson cross-examined Sousa and got him all tangled up in contradictions, which were mainly in letters which Sousa had written from different places where he was giving concerts. He then fiercely demanded an explanation of the contradictions, and the tortured Sousa smilingly replied: "Mr. Johnson, have you ever played one night stands?" This, too, appealed to Johnson's risibility, for he was a thorough sportsman in such matters.

Another correspondent writes: "In the United States Circuit Court, before Judge Dallas, Mr. Johnson was cross-examining one of the defendants most vigorously, with eyes and face riveted on the jury, and not looking at the witness at all. Mr. Johnson asked the witness a question that was one of those questions which would hurt the witness, whichever way he answered it. (I have always thought there was a kind of mesmerism in Mr. Johnson's influence with the jury.) When a long space elapsed without a word being uttered—Mr. Johnson waiting for the witness to answer, still with his eyes turned towards the jury—the silence finally became so pronounced that he had to withdraw his gaze from the jury, which he did very reluctantly, and looked at the witness. He then said, "Well, Mr. Witness." The witness replied, 'Well, Mr. Johnson,' and Mr. Johnson said 'Why don't you answer the question?' The witness said very innocently, 'I didn't know you were asking me a question, Mr. Johnson; I thought you were addressing the jury.' I expected to see Mr. Johnson read 'the riot act' to the witness, but Judge Dallas, in his very quiet way, walked over towards the witness and said, 'Mr. Johnson, I think it is unfortunate that you look at the jury when you are addressing the witness. I do not know myself sometimes whether you are addressing the witness or the jury,' which ended the incident in favor of the witness, and the witness was

perfectly sincere about it, as he afterwards said to me that he had not fully heard the question, as he did not think Mr. Johnson was speaking to him."

The same correspondent furnishes an example of Mr. Johnson's fidelity to the court as to the law and his resourcefulness. On the argument of a rule, two eminent counsel had an array of books before them, brought from the Law Library, but did not have the volume of reports containing a strong case in their favor. When Mr. Johnson was notified of this fact, he said, "that cannot be possible; they must have it." The argument convinced him that they had overlooked it. Sending for the volume, he produced it, saying that he had expected to meet a real argument, that all the cases cited on the other side had no bearing, but there was a case which looked that way, which he then cited and proceeded to distinguish, and after a fifteen minutes' argument convinced the court, and they promptly discharged the rule, from which the other side did not appeal.

One of my correspondents declares that Mr. Johnson had little humor, although not unappreciative of it in others. This, I think, is a mistake. In the Landenberger Mill Fire Escape case, I well recollect that in discussing the relative responsibilities of landlord and tenant for the absence of a fire-escape, which had resulted in a catastrophe, Mr. McMurtrie relied exclusively on a passage in *Bavon's Abridgement*, and sneered at Mr. Johnson's paper-book, which was filled with American authorities to the contrary. Mr. Johnson snorted in return that he "had but little sympathy with the spirit which preferred a little bit of English bacon to the whole American hog." I have been furnished with the following: Mr. Johnson, when arguing a contested will case, was interrupted by Mr. Justice Mitchell asking: "Mr. Johnson, the proposition that you are presenting is the converse of the one that you argued last week, is it not?" Mr. Johnson looked up with a smile, and said, "Yes; but I can't lose them both, can I?" On a trial which was fiercely fought by an able opponent, Mr. Johnson, in addressing the jury, fumbled in an excited way among the papers and exhibits on the table, looking for his eye-glasses. "Take mine," said his adversary, politely tendering them. With well affected scorn, Mr. Johnson exclaimed, "God forbid that I should look at this case through your eyes."

He was not always conventional. He has been known to swear. Indeed, he would swear in court in miraculous terms in a whisper to his colleague at some statement made by a witness against him, "damn vermin," he would mutter, and if it happened to be one of his own witnesses who tripped, the oaths would be enforced by a peculiar pinching of his colleague's knee. In the United States Court, on a day in banc, a most irritating opponent, and one whom he greatly disliked, had likened Mr. Johnson's argument to the clothes of George the IV, as described by Thackeray in his *Four Georges*,

first a coat, and then a vest, and then a shirt, all highly colored, and then nothing. Mr. Johnson swung in his chair and said, "pish," with a sound like the hiss of escaping steam, and, rising, said: "I shall not trouble your Honors with a reply." In the office, on one occasion he was asked an apparently simple question by a well known business man, who was surprised by being told that he could have the answer the next day after the authorities had been examined. The merchant said, "Why, Mr. Johnson, that is a very simple matter, and I thought you could answer it offhand." Mr. Johnson replied, "Do you think that the principles of law are arranged in a book like Worcester's Dictionary, and that all I have to do is to turn the pages to a d—n fool answer to a d—n fool question?"

He had two office manners, one for opponents and one for colleagues and unless you had met and acted with him in both capacities, you could not fully know him. Indeed, you might encounter both manners in the same interview, if you had two relationships to discuss. When opposed to you, he was cold and distant and non-communicative. He never fraternized on the firing line. His ability to protect his client's interests by a slight shake of the head, refusing a discussion and without saying a word, was most effective. Settlements with him were difficult, except under very rare circumstances, although I have been assured by a very eminent lawyer that he had settled many a case with him by laying the facts before him, and after learning his version of them, reaching a reasonably accurate conclusion by an interchange of views. On the other hand, I have been assured by eminent practitioners that they could never effect a settlement with him, and that he metaphorically played poker to the bitter end. A correspondent writes me: "I have had an opportunity of judging of him, both as an antagonist and as an associate. He impressed me rather differently in these two capacities. On the other side of the council table, Mr. Johnson seemed to be absolutely intrepid, to never hesitate in the course to be pursued or a position to be advocated, and always to be completely convinced of the soundness of his position and the success that would follow. When associated with him, I found an entirely different aspect. He impressed you then as being extremely conservative, casting aside position after position as untenable, expressing doubts as to what even appeared strongly-taken ground, and generally as one who was acting as the severest critic of his own side of the case. I think these phases of his character were probably entirely consistent, for after he had proved his critical methods through his own case, what was left was pretty sure to stand the test of any other assault that could be made upon it."

In the treatment of his colleague he was not only just but generous, and there are numerous instances of his entire unselfishness, particularly in the division of fees. How wise he was in advice. "Never

raise blisters," he remarked when considering a letter which a young colleague had drafted and shown him—fortunately before sending it. How wholly free from conceit he was. Success had never spoiled him. "He was always modest in his personal and professional intercourse and his manly maintenance of the rights of his clients was not mitigated by this constant attitude." In the words of Dryden, he was "swift in despatch and easy of access." He was a good raconteur and an excellent mimic. Though not socially inclined, he was hospitable and delighted in the Sunday visits of a few friends, and there was a place at his table during the week where the lonely could share his loneliness. At times he was tenderness itself. He could not speak of Dale without tears, and to a few he spoke of sorrows that were sacred. He was sympathetic in his correspondence with those in grief. He visited the bedside of the sick, and he cherished the gift of a book or a flower. He was as passionately devoted to art as some men are to books—but I forbear. He was fond of a ball game, and he was a constant attendant upon illustrated lectures upon travel.

It is a melancholy thought that the memorials of Mr. Johnson must rest largely in the fleeting recollections of those who personally knew him, and who, like himself, are but mortals soon destined for the grave. It is the sad but inevitable fate of men whose entire careers were spent in the courts and were unknown elsewhere. Judge Sharswood gave expression to this thought in his *Memoir of Sir William Blackstone*, and Mr. Johnson himself in his paper "In Memoriam," read before this Association in June, 1913, put it into these touching words: "In the reports we find at least some evidence of the judges who helped to elucidate, to state and to perpetuate the law; but what, even in the case of the greatest of the great lawyers, remains of the brilliant arguments which won verdicts and secured decisions? The court rooms themselves, which were the theatres of their triumphs, and the audiences, which, entranced, hung upon their lips, have not more completely vanished than has the remembrance of their utterances."

I turn now to a general summary of his labors. There are more than 350 bound volumes of his paper-books. These deal chiefly with his appellate work. He argued 1525 cases in the Supreme Court of Pennsylvania, 60 in the Superior Court, 16 in the District Court of the United States, 53 in the Circuit Court, 198 in the United States Circuit Court of Appeals, 168 in the Supreme Court of the United States, and 43 in the Appellate Courts of other jurisdictions. These latter embraced the Court of Claims, the Court of Appeals of the District of Columbia, and the courts of last resort in New York, New Jersey, Maryland, Missouri, Indiana, Kentucky, Michigan, Florida and Illinois.

Up to about fifteen or twenty years ago he preferred to practice

almost exclusively in Philadelphia, and disliked to argue cases elsewhere, even sending his associates to argue cases in the Supreme Court at Washington, if the arguments interfered with local practice. In spite of himself, however, he was drawn into cases of national prominence, and in his later years he enjoyed the arguments at Washington and before the courts of states other than Pennsylvania. Within the past year he argued ten cases before the Supreme Court of the United States, nine in the lower courts of the United States, twenty in the Supreme Court of Pennsylvania and four in the Superior Court. "His delight in argument was to develop in a complicated case some new point overlooked by others in the multiplicity of issues, to present it apart from the other questions so that the court could find in it alone a clear and logical ground on which to rest an opinion. His success in this was remarkable and often a case has been decided upon some point of this kind developed by him in his final argument and so clearly stated that it stood out as an oasis in a desert of shifting sands of contention." These points were not extemporized at the argument table. "It was his habit to formulate in advance of argument an abstract of the paper-books as printed, making notes full of abbreviations understood only to himself, and which he intended should be the basis of his spoken argument, and this might differ from his colleagues' presentation." It was not a new point in the sense that surprise might be pleaded, but it was the point as he saw it, and on this he would hammer mightily. A good illustration of this is to be found in the case of *United States v. Knight*—his earliest case of national importance as affecting the history of the country for the next succeeding twenty years in the trust agitation—and by his unequalled genius for selecting the strong point, and in confining the court to that, he virtually excluded Mr. McMurtrie, who had come prepared elaborately to argue under common law decisions what was a restraint of trade.

Another early case, which ran through years of hot fighting and which went twice to the Supreme Court of the United States, resulting in a final victory for Mr. Johnson, was that of the *Central Transportation Company v. The Pullman Palace Car Company*, involving a lease of its cars by the former to the latter. He also argued the *Oleomargarine Cases*, involving the validity of state laws as to coloring marketable products; the freight rate cases of the *Interstate Commission v. The Lehigh Valley Railroad*; the anti-trust cases of the *United States v. The Reading Company*; the *Coal Trust Cases*; various corporation tax cases involving excises; the *Direct Inheritance Tax Cases*; the *Northern Securities dissolution suit* and its consequent suit of *Harriman v. The Northern Securities Company*; the *Commodities Clause Case* under the Hepburn Act; the *Full Crew Law*; the *Eight-Hour Law*; the *American Tobacco Cases*; the *Standard Oil Cases* against the United States, and the

case of *Virginia v. West Virginia*, involving the share of the latter in the former's pre-Civil War debt. One of his great triumphs, as a vindication of his personal advice and judgment, was that of the *Pennsylvania Railroad Company v. Western Union Telegraph Company*, where the Supreme Court of the United States finally sustained, under the terms of the lease, the removal in a single night, without notice, of the poles of the telegraph company from the right of way of the railroad—an instance of professional daring unexampled in our annals.

For fifteen years at least, in the judgment of the most competent observers, he stood pre-eminently at the head of the bar of the Nation. In answer to a direct question, "Would you mind telling me whom you regard as the greatest lawyer in this country?" Mr. Justice Brown of the Supreme Court of the United States replied: "Speaking among ourselves, we call Mr. Johnson 'The King of the American Bar.'" The most convincing proof of his supremacy at the national bar—his solitary leadership in Pennsylvania being conceded by all—is to be found in the circumstance that when the managers of the Sugar Trust were indicted for conspiracy—men of position, of influence, of boundless wealth, with their characters and liberties at stake and with the whole bar of America to choose from—they selected Mr. Johnson as their chief defender, and from that time forward no really great case was defended in which he did not lead.

The demagogue might assert that he always appeared in defence of entrenched corporate interests, and that he was hostile to progress in the liberation of mankind from monopolies and business tyrannies. This is to confuse the function of the judiciary with that of the legislature and the function of the lawyer with that of the agitator, or a public officer entrusted with the interests of the community. Ours is a system of law for the protection of rights, the rights of the strong as well as the rights of the weak, for the law is no respecter of persons. A government of law contemplates reciprocal rights as well as duties, and with us the functions of government are constitutionally apportioned among three departments. It is the duty of the judiciary to bring to the test of the Constitution the statutes and acts of the other departments, to interpret these acts rationally, deliberately, judicially. To perform this duty—there must be a hearing of both sides, for, if there is no hearing or a mere *ex parte* hearing, there can be no judgment. Judgment is the resultant of opposing considerations. It is the nice adjustment of attack and defence to the scales of exact justice. It is of the essence of a judicial decree, which is the final determination of contested matters, that it should be fair, as well as just, and it cannot be either if it be not based upon trial of the facts, and an open, impartial hearing in the temple, where the judges sit not as execution-

ers, not as instruments of the proletariat, not as the creatures of corrupted power, not as the sycophants of kings, but as the constitutionally appointed arbitrators between the citizens in all questions touching the extent and sway of constitutional power, as the august representatives of the wisdom and justice and conscience of the whole people, in the exposition of their constitution and laws; as the representatives of the substitution of morals and order for violence and disorder in all controversies between the citizens, the state and the nation. To aid the judges in proper performance there must be argument, and in great cases there must be great arguments, and these it was the high privilege of Mr. Johnson to make. Into the warp and woof of the imperishable fabric of our jurisprudence there was woven the thought, the learning, the wisdom, the integrity of this incomparable advocate. He stood as a steadying influence in helping the judges to a right conclusion. He had a function to perform and was an element to be reckoned with. His appearances were so frequent that he became a practical part of the court. He was most active during the period of efforts to correct abuses which had followed our enormous business expansion, and he appeared as the representative of legal conservatism in an era of fierce impulse for change. He stood as a seawall against the raging of the sea. The conditions under which he wrought are now passing. Hence, he can have no successor.

His conduct at all times won respect. There was a flint-like honesty of mind and heart which underlay all his other qualifications, and without which all others would have failed him. Chief Justice White has written: "For his personality, although I did not know him intimately, I formed a very strong attachment and never ceased to admire the ruggedness of his integrity and the intensity and devotion with which he pursued his ideals as to duty, which were the very highest characteristics of his professional life."

It is a difficult task to describe John G. Johnson. He was so big as to defy measurement. He was so strong in body and in mind that we can think of no one like him. The Greeks sought to express the duality of physical and mental strength in the fabled Centaur, where the trunk and limbs of a horse were united to the head, arms and heart of a man. The suppleness, speed, spirit and endurance of the noblest of animals were made a part of the body of a hunter whose unerring eye and mighty arm drove his bolt to the heart of his quarry, and taught the Olympic youths the value of precise aim. The strength and directness of Mr. Johnson enabled him to reach the heart of every controversy. He never missed his aim, although he did not always effect a killing, due to a defective shaft and not to error of vision or a tired muscle. The spring of his mind had the energy of a catapult. In the full exercise of his faculties he resembled an elemental force, like the flood of Niagara or the sure grind

of a glacier. He was dynamic, if the term be used as meaning effective force and not a destructive explosive. But metaphor or simile will not suffice. His vigor, directness and simplicity were manifestations of power, the faculty of irresistible accomplishment. Because of his manner of exercising power he stands alone. His manner varied with each tribunal, with each cause, with each witness. He could be grave or playful, denunciatory or sarcastic, subtle or innocent, profound or transparent, conciliatory or overwhelming. He bore down upon his adversary with indisputable weight, with a full equipment of knowledge and authority. His strategy was never surprised, his tactics were but rarely foiled. His experience, unmatched in variety and extent, extemporized arguments to meet sudden situations, and victories snatched from the jaws of defeat invested him with an aura. The junior bar viewed him with the superstitious awe paid by savages to a tribal king. The senior bar regarded him as the safest of colleagues and the soundest of counselors. Judges attended to his utterances as did Themistocles to the Oracle. The problems submitted to his judgment were so stupendous and the interests involved were so vast that he carried a weight of professional responsibility never before placed upon a single man. He never swayed beneath the burden, and never paused for breath. His versatility was astonishing, and his concentration was like the coil of the python. There was no black art resorted to, no artifice, no deception, no relaxing of principle. His word was a covenant. His conduct was a code of ethics. He was the embodiment of legal sanity on an unprecedented scale. If we except his love of art, he devoted himself so exclusively to the practice of the law that our field of vision is limited to the forum. We see him only in the court room, and then only at the bar. He owed nothing to early advantages of birth, fortune or family influence. He held no office, he wrote no judicial opinions, he delivered no public addresses, he published no books. The fame and influence of every other great name which we associate with leadership of the Bar of the Nation was enhanced by official position. Mr. Hamilton was author in part of the *Federalist* and was Secretary of the Treasury; Mr. Marshall had been a diplomatist, Secretary of State, and became Chief Justice of the United States; Mr. Pinkney was Attorney-General of the United States and Minister to Russia; Mr. Wirt was Attorney-General and the author of books; Mr. Webster was a Senator, a Cabinet officer, the orator of historic occasions; Mr. Binney was a member of Congress and the author of books, a law reporter, an essayist, a polemical writer; Mr. Meredith was a member of the Cabinet, an Attorney-General of the State, and the President of a Constitutional Convention; Mr. Curtis was an Associate Justice of the Supreme Court of the United States and a lecturer at the Harvard Law School; Mr. Evarts was Attorney-General, Secretary of State and Senator of

the United States; Mr. Dillon was a judge and the author of books; Mr. Carter was a President of the American Bar Association and the author of an exquisite brochure upon the Common Law; Mr. Choate was a diplomatist, "a lawyer among orators, and an orator among lawyers." Mr. Johnson was none of these. His reputation cannot be safely rested upon a single case, as is Mr. Binney's upon the Girard Will Case, or Judge Black's upon the Milligan Case in Defense of Trial by Jury, or Erskine's in Defense of Stockdale, or Curran's in Defense of Rowan. It rests upon the bulk and the magnitude, the variety and the ceaselessness of his unreported efforts, upon the solidity of his character, upon his sagaciousness and knowledge. No words describe him better than those of Sir Roger L'Estrange in depicting Sir John Maynard: "An honest lawyer is the life-guard of our fortunes; the best collateral security for an estate; a trusty pilot to steer us through the dangerous oceans of contention; a true priest of justice, that neither sacrifices to fraud nor covetousness; and in this outdoes those of a higher function, that he can make people honest that are sermon-proof. He is an infallible anatomist of *meum* and *tuum*, that will presently search a cause to the quick, and find out the lurking cheat, though masked in never so fair pretenses; one that practices law so as never to forget the Gospel, but always wears a conscience as well as a gown, though he knows all the criticisms of his faculty and the nice snapperadoes of practice, yet he never uses them. He draws his knowledge from the original springs, digesting the whole body of the law in a laborious and regular method, but especially aims to be well versed in the practice of every court and rightly to understand the art of good pleading, as knowing them to be the most useful to unravel the knotty intrigues of the cause and reduce it to an issue; yet hates to pester the court with *Circuities*, *Negative Pregnants*, *Departures*, and multiplied *Inconveniences*. In a word, whilst he lives, he is the delight of the court, the ornament of the bar, the glory of his profession, the patron of innocence, the upholder of right, the scourge of oppression, the terror of deceit and the oracle of his country; and when death calls him to the Bar of Heaven, by a *habeas corpus cum causia*, he finds his Judge his Advocate, obtains a *liberate* from all his infirmities, and continues still one of the Long Robe in Glory."

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